



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTEFERENCES

Appellants: Chomik et al.
Serial No.: 09/639,508
Filed: August 16, 2000
For: VENT DISK FOR BABY BOTTLE AND METHOD
AND APPARATUS FOR MANUFACTURE THEREOF
Examiner: Dexter, Clark F.
Art Unit: 3724
Customer Number: 27623
Confirmation No.: 3194

Attorney Docket No.: 460.1891USV

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF FILED UNDER 37 C.F.R. §41.14

Dear Sir:

Appellants submit this Reply Brief in accordance with the provisions of 37 C.F.R.
§41.41 in response to the Examiner's Answer dated July 21, 2006.

Claims 14 through 16 stand finally rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,499,729 to Greenwood ("Greenwood").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."
Verdegaal Bros. V. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "Under 35 U.S.C. Section 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim." Gechter v. Davidson, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). "The identical invention must be shown in as complete detail as is contained in the...claim."
Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 14 recites "plurality of apertures with each of said centerlines coincident to a radius that forms a concave curvature of said domed portion". It is respectfully submitted that the Examiner's Answer erroneously relies on assumptions based on geometric representations in Figure 17 in order to substantiate that the claimed invention is disclosed in Greenwood.

Specifically, the Examiner's Answer states that, in Figure 17, "the line representing perforation 73 appears to extend from the apex of depression 74, extends to the outer surface of diaphragm 72, and appears to intersect that surface at an angle of about 90 degrees to a tangent of the surface at the point of intersection...Thus, the center line is coincident to a radius of the concave curvature of the domed portion, and Greenwood meets the claimed limitations (emphasis added)." See, page 7, lines 12-18.

Claim 15 recites the method of claim 14, "further comprising forming a portion of each of said plurality of apertures with a hemispherical shape." The Examiner's Answer again relies on an assumption in order to show that this element is disclosed in Greenwood. Specifically, the Examiner's Answer states "the aperture depicted in Figure

17 includes a hemispherically shaped recess or depression 74 which is substantially the same as that of the present invention (emphasis added).” See, page 6, lines 19-21.

Claim 16 recites a “plurality of perforations being formed coincident to a corresponding centerline of one of said plurality of depressions.” The Examiner states that “the aperture depicted in Figure 17 also includes a perforation 73 that is located and oriented in the substantially the same manner as the perforation of the present invention, particularly as shown in Figure 2A of the present application, and in the manner claimed in the appealed claims (emphasis added).” See, page 6, line 21 – page 7, line 4. The Examiner erroneously relies on assumptions to justify that this claim element is disclosed in Greenwood.

It is respectfully submitted that the use of assumptions based on geometric representations in Figure 17 does not meet the standards required for a 102(b) rejection. In fact, the Examiner states that “applicant is well aware, unless stated so in the patent, the drawings cannot be considered as being drawn to scale.” Thus, the Examiner’s Answer is contradictory in using the geometric representations in Figure 17 to substantiate the presence of the claim element in Greenwood. As such, Appellants respectfully requests that the 102(b) rejection to claims 14 through 16 be reversed.

Moreover, the Examiner’s Answer states that “Greenwood teaches and/or suggests the claimed invention to one having ordinary skill in the art.” The Examiner’s Answer cites paragraph 16 of the Declaration of Richard S. Chomik (“Declaration”) to argue that the leakage problem had been solved prior to the current invention. However, the Examiner’s Answer fails to address paragraph 17 of the Declaration which reveals Mr. Chomik’s motivation to reduce the randomness of the punctures.

In Greenwood, the specification describes making the apertures 73 with a puncture from a “pin” through the spherically shaped or curved diaphragm, as opposed to using a structured, precise method such as a plurality of fixed pins. (Greenwood col.

8, lines 57-60). Additionally, as described in the Declaration of Mr. Manganiello, Mr. Greenwood disclosed to the assignee of the pending application that “the puncture holes were made one at a time by hand using a push pin”, which is consistent with the description provided in the Greenwood specification.

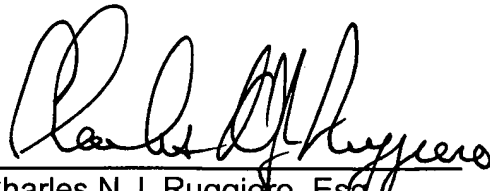
The Examiner’s Answer does not dispute Appellants’ argument that affidavits submitted for the present application stated that the apertures of Greenwood were formed such that they were “random in terms of point of entry, angle, and contact/seal surface area.” See page 11, lines 10-13 of the Examiner’s Answer. However, the Examiner’s Answer asserts that Greenwood would teach one of ordinary skill in the art a method of reducing the randomness of the punctures. This simply is not true as evidenced by the Declaration of Mr. Chomik.

In paragraph 17 of the Declaration, Mr. Chomik state: “To eliminate the randomness of the puncture holes, I decided that the perforations...should be formed automatically so that they would be substantially uniformly or identically and consistently formed through the residuals of the vent disc (emphasis added).”

As such, and in light of Mr. Chomik’s declaration, Greenwood fails to teach or suggest to one of ordinary skill in the art methods of making punctures at a correct position and an angle so that each of the apertures have centerlines that are coincident to a radius that forms the concave surface of the domed portion as recited by claims 14 and 16.

In summary, Appellants respectfully request that the Board of Appeals reverse the final rejections of the claims and pass all of the pending claims to issuance.

Dated: September 21, 2006

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero". The signature is written in a cursive, flowing style with a horizontal line underneath it.

Charles N.J. Ruggiero, Esq.
Registration No. 28,468
Attorney for Applicants
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square
Stamford, CT 06901-2682
Tel: (203) 327-4500